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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 133

R. H. STEARNS COMPANY, BOSTON, MASSACHUSETTS, petitioner

v.

THE UNITED STATES

ON A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

SUPPLEMENTAL BRIEF FOR THE UNITED STATES

In its reply brief the petitioner has advanced certain arguments which we desire to answer in this supplemental brief.

A

The petitioner attacks the Government's defense of equitable estoppel as being ill-founded under established rules prescribing the requisite elements of such a defense. The Government invokes what this Court has described as the "vital principle" of equitable estoppel, namely, "that he who by his language or conduct leads another to do what he would

not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted." *Dickerson* v. *Colgrove*, 100 U.S. 578, 580. Misrepresentations of existing fact is not necessary in order to make the principle applicable. No such element was required by this Court in the *Colgrove case*, where the plaintiff was held to be estopped to assert title to land because his predecessor in title had disavowed the intention of asserting his claims against others then in possession. The basis for the estoppel in the instant case is that the petitioner's conduct showed that it meant to have its outstanding tax accounts settled by a credit, and the Commissioner justifiably delayed collection and granted the petitioner's request. The petitioner concedes (Reply Br. 3–4) that the tax would have been timely collected if the claim for credit had not been filed. The petitioner's conduct, we submit, gave the Commissioner reasonable ground to act on the request irrespective of the statute of limitations, as upon permission given by the petitioner. Cf. Williston, *Contracts*, Section 692.[1]

The Government does not assert a defense of laches, but refers to the petitioner's paying the balance still due after the application of the credit,

[1] In this section Williston refers to estoppel of this sort as "promissory estoppel," and points out that it is not based upon a misstatement of existing fact, but a promise, agreement, or permission for future conduct, and that the "fundamental basis for the estoppel is the justifiableness of the conduct of the party claiming the estoppel."

and its acceptance of the transaction for nearly six years, in order to show that the petitioner intended events to occur as they did, and was not dissatisfied with them when they occurred. This is strong evidence, we submit, of the petitioner's intention in filing the claim for credit. Whether or not the petitioner had a perfect knowledge of the Bureau's practice upon receipt of a claim for credit is immaterial, except as it bears upon the petitioner's expectation that its request would find favor with the Commissioner; for clearly it is not necessary that the person estopped be absolutely certain that his conduct will be acted upon by the one who afterwards claims the benefit of the estoppel.[2]

The petitioner urges that the defense of equitable estoppel is not available because the statute of limitations here involved provided only one method for its avoidance, namely, a waiver. But, as pointed out in our main brief (pp. 11–12), the defense has been sustained in other tax cases where credits out of time were sought to be recovered. The case of *Botany Mills* v. *United States*, 278 U.S. 282, cited by the petitioner, is not pertinent, even by analogy, for there this Court specifically reserved decision on the question whether the agreement, which was

[2] The petitioner's argument (Reply Br. 4) that the Government's position may result in the taxpayer's debt being doubled or tripled through the accumulation of interest is obviously fallacious. By hypothesis, the tax is to be collected by credit, and interest will be running equally on both sides of the account.

defective under the statute, could, in some circumstances, be binding by estoppel (p. 289). We submit that no policy such as is involved in preventing avoidance of the statute of frauds, bars the assertion of estoppel here.

The petitioner, while contending for a strict application of the statute of limitations against the Government, bases its action upon an account stated in order to avoid the operation of the statute of limitations against taxpayers' suits. The petitioner's whole case necessarily depends on the certificate of overassessment being regarded as an "account stated" sufficient to start the statute of limitations running anew, despite the specific limitations provisions in the revenue laws. But the Commissioner's certificate was no more than an acknowledgment on his part that the tax for 1918 had been overpaid. If this is sufficient to constitute an "account stated" starting the statute of limitations anew, there is no reason, we submit, why the petitioner's claim for credit should not equally be regarded as an "account stated." The petitioner's entire conduct in the transaction (including its acquiescence in the Commissioner's action) shows, we submit, that it intended this claim to be a basis for a final settlement of its 1917 taxes, one element of which was the acknowledgment that the taxes claimed for that year were due. The petitioner should not be allowed the advantage of the account

stated theory without assuming its burdens; if the Commissioner's certificate of overassessment is an account stated, then we contend that the taxpayer's claim for credit, under the circumstances, was one too, and for this reason was sufficient to start anew the limitations period for the collection of the tax.

The petitioner further contends that if the defense of equitable estoppel may be interposed by the Government, a result is reached which is contrary to the intention of Congress as reflected in the refusal of Congress to incorporate into the Revenue Act of 1932 a proposed section that would, in effect, have validated credits made out of time when a claim for credit was filed and collection postponed. The same contention was advanced in petitions for certiorari in *Daube* v. *United States,* 75 C.Cls. 633, affirmed on another point, 289 U.S. 367, and *Ralston Purina Co.* v. *United States,* 75 C.Cls. 525. In the *Daube case,* this Court limited review to another matter (288 U.S. 597), and in the *Ralston Purina case,* the petition was denied. 289 U.S. 732. And, we submit, no intention to deny the Government the protection of the rule of equitable estoppel can be deduced from mere failure to act on the part of Congress. It may as well have indicated the belief of Congress that no such legislation was necessary to prevent refunds in cases of this sort.

B

The petitioner assails the Government's view that it is in no position to attack the validity of the waiver by which it benefited, upon the ground that the Commissioner "refused" to sign the waiver (Reply Br. 8). There is no fact in this record (aside from the mere failure to sign the waiver promptly) that shows a refusal to sign, and we submit that no valid argument can be made upon this wholly unwarranted inference.

C

With respect to the controlling force of the decision of this Court in *Bonwit Teller & Co.* v. *United States,* 283 U.S. 258, we urge again that the question now raised concerning the amount of the alleged account stated, or of the balance struck, was not passed upon by this Court. In that case this Court did not affirm a judgment of the Court of Claims for the amount sought to be recovered, but reversed a judgment dismissing a complaint. We submit that the *Bonwit Teller case* does not now compel a decision that an account is stated for an amount of the overassessment, even though the certificate upon which the account is based shows that no payment in cash of any amount of the overassessment is promised or contemplated.

The petitioner also suggests that Section 281 (a) of the Revenue Act of 1924, c. 234, 43 Stat. 253, 301

(U.S.C., Title 26, Sec. 1065 (a)) compelled a refund or a valid credit of the amount of the overassessment. The petitioner, however, does not quote the provisions of Section 281 (b) limiting the time within which such refunds may be made. Because of this limitation the cases of *Sage* v. *United States,* 250 U.S. 33, and *Fidelity & Deposit Company* v. *United States,* 259 U.S. 296, are plainly distinguishable, apart from the fact that they are based on the specific provisions of the Act of July 27, 1912, c. 256, Sec. 1, 37 Stat. 240, which in the language of this Court (*Sage* v. *United States, supra,* at 39) "created rights where they had not existed before."

CONCLUSION

We submit that the decision below is correct and should be affirmed.

Respectfully submitted.

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